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interest to A.P. New Jersey, Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NORTH RIVER MEWS ASSOCIATES, LLC
and 38 COAH ASSOCIATES, LLC,

Plaintiffs,

v.

ALCOA INC., ALCOA DOMESTIC LLC, as
successor in interest to A.P. NEW JERSEY,
INC., ENVIRO-SCIENCES (OF
DELAWARE) INC., formerly known as
ENVIRO-SCIENCES, INC., and JOHN DOES
1-25 (fictitious names),

Defendants,

v.

RIVER ROAD IMPROVEMENT PHASE II,
INC. and FRED A. DAIBES,

Counterclaim-Defendants.

Honorable Madeline Cox Arleo, U.S.D.J.
Honorable Leda Dunn Wettre, U.S.M.J.

Civil Action No: 2:14-cv-08129 (MCA-LDW)

**ANSWER TO CROSS-CLAIMS OF
ENVIRO-SCIENCES (OF DELAWARE),
INC. AND AFFIRMATIVE DEFENSES**

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Alcoa Inc. and Alcoa Domestic LLC, as successor in interest to A.P. New Jersey, Inc.,
(collectively “Alcoa”), by their counsel K&L Gates LLP, answer the crossclaims of Defendant
Enviro-Sciences (of Delaware), Inc. (hereinafter “Enviro-Sciences”) as follows:

FIRST COUNT (INDEMNIFICATION)

Alcoa denies the allegations set forth in the First Count of the crossclaims of Enviro-
Sciences insofar as the allegations relate to Alcoa. Furthermore, Alcoa denies that Enviro-

Sciences is entitled to the relief described in the First Count as against Alcoa.

SECOND COUNT (CONTRIBUTION)

Alcoa denies the allegations set forth in the Second Count of the crossclaims of Enviro-Sciences insofar as the allegations relate to Alcoa. Furthermore, Alcoa denies that Enviro-Sciences is entitled to the relief described in the Second Count as against Alcoa.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The crossclaims fail to state a claim upon which relief can be granted against Alcoa.

SECOND AFFIRMATIVE DEFENSE

The crossclaims are barred, in whole or in part, by reason of laches, estoppel, waiver, consent, unclean hands, res judicata, and/or other equitable defenses.

THIRD AFFIRMATIVE DEFENSE

Enviro-Sciences did not comply with the applicable statute or statutes of limitations or other applicable law, rule, statute, or regulation controlling or requiring the institution of suit within a certain period of time following its accrual, for some or all of Enviro-Sciences' alleged damages; accordingly, Enviro-Sciences' claims are barred as a matter of law.

FOURTH AFFIRMATIVE DEFENSE

Alcoa is not jointly or severally liable in tort with Enviro-Sciences for the same injury allegedly suffered by Plaintiffs.

FIFTH AFFIRMATIVE DEFENSE

Enviro-Sciences did not have common liability with Alcoa at the time Plaintiffs' causes of action accrued.

SIXTH AFFIRMATIVE DEFENSE

There is no special legal relationship between Alcoa and Enviro-Sciences that would entitle Enviro-Sciences to indemnification from Alcoa.

SEVENTH AFFIRMATIVE DEFENSE

Enviro-Sciences' liability to the Plaintiffs results from Enviro-Sciences' own negligence and is primary, not merely constructive, technical, imputed, or vicarious; thus, Alcoa is not liable to Enviro-Sciences for indemnification.

EIGHTH AFFIRMATIVE DEFENSE

The crossclaims are preempted by federal law.

NINTH AFFIRMATIVE DEFENSE

Enviro-Sciences' alleged damages have been caused solely by the acts of third parties over whom Alcoa had not control or right of control or by superseding or intervening conduct of others outside of Alcoa's control.

TENTH AFFIRMATIVE DEFENSE

Any loss suffered by Enviro-Sciences was as a result of its own negligence, or the negligence or fault of its agents, which negligence or fault is greater than any alleged negligence of Alcoa, which negligence is specifically denied.

ELEVENTH AFFIRMATIVE DEFENSE

The crossclaims are barred or subject to reduction by reason of Enviro-Sciences' own contributory negligence.

TWELFTH AFFIRMATIVE DEFENSE

The crossclaims are barred or subject to reduction by reason of the doctrine of comparative negligence or the Joint Tortfeasor Contribution Act.

THIRTEENTH AFFIRMATIVE DEFENSE

The alleged damages were the result of the sole negligence of Enviro-Sciences, the Plaintiffs, and/or the Counterclaim-Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

Enviro-Sciences has not sustained any damages by virtue of any act or omission of Alcoa or its agents or employees.

FIFTEENTH AFFIRMATIVE DEFENSE

The crossclaims are barred or subject to reduction by reason of Enviro-Sciences' failure to mitigate its alleged damages.

SIXTEENTH AFFIRMATIVE DEFENSE

The crossclaims are barred by reason of Enviro-Sciences' assumption of risk.

Dated: January 4, 2016

Respectfully submitted,

K&L GATES LLP

By: /s/ Michael E. Waller

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